BAIL SLIP

The Revision Petitioner / Accused Viz. R.Subramanian, was directed to be released on bail by the order of this Court dated 28.7.2004 and made in Crl.M.P.No.8537/04 in Crl.R.C.No.1345/04.

In the High Court of Judicature at Madras

Date: 26.07.2006

Coram

The Honourable Mr. Justice S.ASHOK KUMAR

Criminal Revision Case No.1345 of 2004

R.Subramanian .. Petitioner

vs.

Jayapriya Financiers,
5A/80, Main Road,
Neyveli - 2, rep. by its
Manager, S.Suresh .. Respondent

Revision against the conviction and sentence passed in C.A.No.43 of 2003, dated 23.07.2004 on the file of the learned Additional District and Sessions Judge (Fast Tract Court No.2), at Cuddalore, confirming the conviction and sentence passed in C.C.No.511 of 1998, dated 09.09.2003, on the file of the learned District Munsif-Cum-Judicial Magistrate, Neyveli, and to set aside the same.

For Petitioner : Mr.V.Padmanabhan for
Mr.A.Arasu Ganesan

For Respondent : Mr.S.Venkateswaran

O R D E R

This revision is against the conviction and sentence passed in C.A.No.43 of 2003, dated 23.07.2004 on the file of the learned Additional District and Sessions Judge (Fast Tract Court No.2), at Cuddalore, confirming the conviction and sentence passed in C.C.No.511 of 1998, dated 09.09.2003, on the file of the learned District Munsif-Cum-Judicial Magistrate, Neyveli, whereby the accused was found guilty of the offence punishable under Sections 138 and 142 of the Negotiable Instruments Act and convicted and sentenced to undergo one year Simple Imprisonment and under Section 357 of Cr.P.C. the accused was directed to pay compensation

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of Rs.13,00,000/- to the complainant directly.

2. The brief facts of the case are as follows:-

The revision petitioner stood accused in C.C.No.511 of 1998, on the file of the District Munsif-Cum-Judicial Magistrate, Neyveli. The revision petitioner/accused borrowed a sum of Rs.10,00,000/- from Jayapriya Finance, proprietory concern and executed a Promissory Note, Ex.P.1, on 08.09.1996 along with his wife Gandhimathi. The accused is a Contractor and he borrowed the above said sum for his business and family purposes. In order to discharge the said loan, the accused issued three cheques for a sum of Rs.13,00,000/- towards the principal and interest. The first cheque was issued on 07.08.1998 for a sum of Rs.4,50,000/-, the second cheque was issued on 12.08.1998 for a sum of Rs.5,50,000/- and the third cheque was issued on 24.08.1998 for a sum of Rs.3,00,000/-. The cheques when presented to the bank were returned due to "Insufficient fund" and "Account closed". Three dishonoured cheques were marked as Exs.P.2, P.5 and P.9. Exs.P.4 and P.7 are the memos issued by the drawee bank for dishonour of the cheques. Hence, the complainant issued notices to the accused (Exs.P.12 and P.13). Both the notices were returned as unclaimed by the accused. Therefore, a private complaint was lodged before the learned Magistrate.

3. On behalf of the complainant, P.Ws 1 to 3 were examined and Exs.P.1 to P.16 were marked. On behalf of the accused, the accused himself was examined as D.W.1 and Exs.D.1 and D.2 were marked.

4. When the accused was questioned under Section 313 Code of Criminal Procedure, with regard to the incriminating circumstances appearing against him, he denied the same as false and incorrect.

5. After considering the oral and documentary evidence adduced on behalf of the accused, the learned Judicial Magistrate came to the conclusion that the prosecution case has been proved and found the accused guilty under Sections 138 and 142 of the Negotiable Instruments Act and therefore, convicted the accused to undergo Simple Imprisonment for a period of one year and also directed him to pay compensation of Rs.13,00,000/- to the complainant under Section 357 of Criminal Procedure Code.

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6. As against the said Judgment and conviction, the accused preferred an appeal in C.A.No.43 of 2003 before the Additional District and Sessions Judge (Fast Track Court No.2), Cuddalore. The learned District Sessions Judge heard the appeal and dismissed the same and confirming the Judgment and conviction passed by the learned Judicial Magistrate. Aggrieved over the same, this revision is filed before this Court.

7. Mr.V.Padmanabhan, learned counsel appearing for the accused/revision petitioner restricted his contentions to only one point

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i.e. the accused was not questioned with regard to the compensation payable by him. In support of the said contention, the learned counsel relied on the Judgment reported in 2004 (1) Supreme 9 (Mangilal Vs. State of Madhya Pradesh) when the Supreme Court has observed as follows:-

> 8. The power of the Court to award compensation to victims under Section 357 is not ancillary to other sentences but is in addition thereto. In Hari Singh V. Sukhbir Singh and others (1998 (4) SCC 551) it was observed that the power under Section 357 is a measure of responding appropriately to crime as well as reconciling the victim with the offender. It is, to some extent, a re-compensatory measure to rehabilitate to an extent the beleaguered victims of the crime, a modern constructive approach to crimes, a step forward in our criminal justice system. In Sarwan Singh and others etc V. The State of Punjab (AIR 1978 SC 1525) it was held that in awarding compensation, the Court has to decide whether the case is fit one in which compensation has to be awarded. If it is found that the compensation should be ordered to be paid, then while arriving at the quantum to be paid, Courts are obliged to keep into account the capacity of the accused to pay the compensation besides taking into consideration also the nature of the crime in each case, the justness of the claim for compensation and the need for it in the context of the victim or members of the family of the victim and other relevant circumstances, if any, in so fixing or apportioning the amount of compensation. As noted above, the mode of application of the fine is indicated in sub section (1) of Section 357. Sub-section (3) contains an independent and distinct power to award compensation.
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> 9. That brings us to the most crucial question, that is, whether the Court was required to hear accused before fixing the quantum of compensation. It is urged by the learned counsel for the State that unlike a sentence of fine before imposition of which a Court is required to hear the accused while considering the question of quantum of sentence, it is but natural that the trial Court after hearing on the question of sentence does not impose a find, but in terms of sub-section (3) of Section 357 proceed to award compensation, at that juncture or even during the course of hearing as to the quantum of sentence by sufficient indication made by the Court concerned, the accused gets opportunity to present his version as to the relevant criteria or norms to be applied in the context of the case before the Court on the quantum of compensation. The position cannot be said to be, in any way different while the Appellate or Revisional Court also does it in terms of sub-section (4), as long as it requires to be done in the light of the criteria indicated as above, unless it is by any agreement or consent of the parties such compensation

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has been fixed.

10. Even if a statute is silent and there are no positive words in the Act or Rules made thereunder there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected, by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statute, unless there is clear mandate to the contrary. No form or procedure should ever be permitted to exclude the presentation of a litigant's defence or stand. Even in the absence of a provision in procedural laws, power inheres in every Tribunal/Court of a judicial or quasi-judicial character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper discharge of their duties. Procedure is mainly grounded on principles of natural justice irrespective of the extent of its application by express provision in that regard in given situation. It has always been a cherished principle. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. (See Swadesi Cotton Mills etc. etc., V. Union of India etc. etc., AIR 1961 SC 818). Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only in areas not covered by any law validly made. They are means to an end and not an end in themselves. The principles of natural justice have many facets. Two of them are: notice of the case to be met, and opportunity to explain.

11. In the aforesaid premises, the irresistible conclusion is that opportunity has to be granted before directing payment of compensation under Section 357 (4) of the Code.

12. The use of the expression "may" throws light on the legislative intent in the context it is used. It has been used in the permissible sense and does not make it obligatory. In the aforesaid background, the inevitable conclusion is that if that if the Appellate Court intends to award compensation an opportunity of hearing has to be granted so that the relevant aspects like the need to award compensation, capacity of the accused to pay and several other relevant factors can be taken

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note of.

8. The learned counsel for the accused/revision petitioner has relied on two more decisions of the Hon'ble Supreme Court reported in (1988) 4 Supreme Court Cases 551 (Hari Singh Vs. Sukhbir Singh and others) and in AIR 1999 Supreme Court 3762 (K.Bhaskaran Vs. Vaidhyan Balan and another). The decision reported in (1988) 4 Supreme Court Cases 551 (Hari Singh Vs. Sukhbir Singh and others) paragraphs 10 and 11 read as follows:-

> 10. Sub-section (1) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused. In this case, we are not concerned with sub-section (1). We are concerned only with sub-section (3). It is an important provision but courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the court to award compensation to victims while passing judgment of conviction. In addition to conviction, the court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all courts to exercise this power liberally so as to meet the ends of justice in a better way.
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> 11. The payment by way of compensation must, however, be reasonable. What is reasonable, may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by instalments, may also be given. The court may enforce the order by imposing sentence in default.

9. In AIR 1999 Supreme Court 3762 (K.Bhaskaran Vs. Vaidhyan Balan and another), paragraphs 30 and 31 read as follows:-

> "30. It is true, if a judicial magistrate of first class were to order compensation to be paid to the complainant from out of the fine realised the complainant will be the loser when the cheque amount exceeded the said limit. In such a case a complainant would get only the maximum amount of Rupees five

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thousand.

> 31. However, the magistrate in such cases can alleviate the grievance of the complainant by making resort to Section 357(3) of the Code. It is well to remember that this Court has emphasized the need for making liberal use of that provision. (Hari Kishan V Sukhbir Singh, AIR 1988 SC 2127: 1989 Cri LJ 116). No limit is mentioned in the sub-section and therefore, a magistrate can award any sum as compensation. Of course while fixing the quantum of such compensation the Magistrate has to consider what would be the reasonable amount of compensation payable to the complainant. Thus, even if the trial was before a Court of Magistrate of first class in respect of a cheque which covers an among exceeding Rs.5,000/- the Court has power to award compensation to be paid to the complainant.

10. The facts of this case are totally different from the case on hand. In Mangilal's case, the offence was under various Sections of I.P.C., including murder, and as far as State of Madhya Pradesh is concerned there was an amendment to sub Section 3 of Section 357, which is substituted as follows:-

> (3) When a Court imposes a sentence, of which fine does not form a part, the Court may, and where a person against whom an offence is committed belongs to Scheduled Castes or Scheduled Tribes as defined in clauses (24) and (25) of Article 366 of the Constitution, the Court shall, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.
>
> Provided that the Court may not order the accused person to pay by way of compensation any amount, if both the accused person and the person against whom an offence is committed belong either to the Scheduled Caste or the Scheduled Tribe. (M.P. Act 20 of 1978 w.e.f. 5.10.1978).

11. In the State of Tamilnadu, there is no such amendment to Section 357(3) Cr.P.C. Further, the said Judgment deals with the power of the Appellate Court or Revisional Court in directing the accused for payment of compensation under Section 357(4) Cr.P.C. That was a murder case of a member of Scheduled Caste in which the Trial Court did not direct the accused to pay compensation but, the High Court has directed the accused to pay the compensation of Rs.30,000/-. But this is a case for an offence under section 138 of Negotiable Instruments Act in which the Trial Court while passing sentence, had directed the accused to pay compensation under sub-section 3 of Section 357 Cr.P.C. Power to direct payment of compensation by Appellate Court is under sub-section 4 of Section 357

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Cr.P.C. There is no provision in Section 357(3) Cr.P.C. that the accused must be heard before passing the order of conviction and directing for payment of compensation.

12. I am of the opinion that for the Trial Court, before passing an order to pay the compensation, particularly in cheque bounced cases, it is not necessary to question the accused regarding compensation, because, after all the amount of compensation awarded is the cheque amount or the amount borrowed by the accused. In such cases, the capacity of the accused to pay the compensation need not be enquired.

13. In the above circumstances, the contentions raised by the learned counsel for the accused/revision petitioner, are not sustainable and therefore, the revision petition is dismissed. The accused/revision petitioner is directed to pay the compensation amount within a period of three months from today. The Trial Court is directed to take steps to secure the custody of the accused and make him to undergo the remaining period of the sentence.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

jbm

To
1. The Additional District and Sessions Judge,
Fast Track Court No.2, Cuddalore.
2. -DO- through The Principal Sessions Judge,
Cuddalore.
3. The District Munsif cum Judicial Magistrate,
Neyveli.
. -do- through the Chief Judicial Magistrate,
Cuddalore.
5. The Superintendent,
Central Prison, Cuddalore.
6. The Public Prosecutor, High Court, Madras.
+ 1 CC To Mrs.Hema Sampath, Advocate SR NO. 33030

Crl.R.C.No.1345 of 2004
26.07.2006

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